



# University of Hawaii at Manoa

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## Proposals 315 and 421 RELATING TO ENERGY RESOURCES AND RIGHTS

Statement for  
Con Committee on  
Environment, Agriculture, Conservation and Land  
Public Hearing 16 August 1978

by  
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Proposals 315 and 421 would each insert in Article X a new section pertaining to energy resources and rights thereto. This statement on the proposals does not represent an institutional position of the University of Hawaii.

### Geothermal resources

The provisions of Proposal 315 would apply to minerals, which it defines as including geothermal resources. Those of Proposal 421 would apply to energy resources, which it defines as including geothermal, water, and oil resources. Some geothermal rights have been explicitly reserved to the State or predecessor governments. Provisions with respect to other geothermal rights would be provided in diametrically opposite ways by the two proposals. Proposal 315 would declare that the ownership of geothermal rights rests with the owners of the overlying lands if not reserved to the sovereign or the State. Proposal 421 would declare that all geothermal resources are the "property" of the State implying that rights to their development are owned by the State.

In contrast to water resources, there are now no developments of geothermal resources other than a minor development serving the Volcano House. The people of the State may now have greater freedom to determine whether there are or are not private geothermal rights than would otherwise be the case. Other than to note this, and that private ownership of geothermal rights is not necessarily or completely adverse to the public interest, it would be inappropriate for the Environmental Center to comment on the matter of public vs private geothermal rights.

### Other resources

Some comment is appropriate, however, on the concept of rights applying to the other resources named in the two proposals.

The existence of certain private water rights has been universally recognized in the courts in Hawaii. There is considerable uncertainty now as to the extent of these private water rights, but this represents an issue that must be clarified by the courts. In any case, the State is not the owner of all water rights as is at least strongly implied in Proposal 421. Furthermore, the greater part of the water resources in this State have no value as energy resources as implied in that proposal.

The likelihood of the existence of petroleum resources of any consequence in Hawaii is negligible for substantial geologic reasons. There is, therefore, no reason to deal with oil resources in the Constitution as in Proposal 421.

There would be some rationale in applying to metallic mineral resources, such as those of aluminum and titanium, the same concepts of rights as those applying to geothermal resources; even though these mineral resources are not now economically developable, may not be in the foreseeable future, and perhaps may never be. However, there would also be rationale in applying to such metallic resources the same concepts that have in practice been applied to rock, soil, and non-metallic mineral resources. Rock, fill, and clay have been mined under the concept that they are owned by the owners of the overlying land. Again, other than to point out that the concept of private ownership is not necessarily or completely adverse to the public interest, the Environmental Center cannot advise further on the mineral rights.